

1 DENNIS L. KENNEDY
Nevada Bar No. 1462
2 JOSEPH A. LIEBMAN
Nevada Bar No. 10125
3 BAILEY-KENNEDY
8984 Spanish Ridge Avenue
4 Las Vegas, Nevada 89148-1302
(702) 562-8820 Telephone
5 (702) 562-9921 Facsimile
dkennedy@baileykennedy.com
6 jliebman@baileykennedy.com

7 WILLIAM B. FEDERMAN (*admitted pro hac vice*)
FEDERMAN & SHERWOOD
10205 N. Pennsylvania Avenue
8 Oklahoma City, Oklahoma 73120
(405) 235-1560 Telephone
9 (405) 239-2112 Facsimile
wbf@federmanlaw.com

10 Attorneys for Plaintiff

11 UNITED STATES DISTRICT COURT

12 DISTRICT OF NEVADA

13 KEVIN DROVER, individually and on)
14 behalf of all others similarly situated,)
Plaintiff,)
15 v.)
16 LG ELECTRONICS USA, INC.,)
17 Defendant.)
18 _____)

CASE NO. 2:12-cv-00510-LRH-VCF

**PLAINTIFF'S REPLY IN
SUPPORT OF MOTION FOR
RECONSIDERATION**

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1 Plaintiff Kevin Drover (“Plaintiff”), by his attorneys, respectfully submits this Reply in
 2 support of his Motion for Reconsideration (“Motion”) (Doc. # 60) of the Court’s Order dated
 3 February 19, 2013, (“Order”) (Doc. # 59) dismissing Plaintiff’s claim for Unjust Enrichment and
 4 Restitution.

5 **A. Reconsideration of the Order is appropriate.**

6 The Order dismissing Plaintiff’s claim for Unjust Enrichment and Restitution is based
 7 upon the incorrect proposition that LG is an “innocent recipient of unrequested benefits” as
 8 contemplated in the Restatement Third, Restitution and Unjust Enrichment § 50(3). The
 9 conclusion that LG is an “innocent recipient of unrequested benefits” is “manifestly unjust”¹ and
 10 creates a moral hazard “justifying relief from the judgment.”²
 11

12 First, as reasoned in Plaintiff’s Motion, the conclusion that LG is an “innocent recipient
 13 of unrequested benefits” is “manifestly unjust” in that it is clearly contrary to § 50(1), § 50 cmt.
 14 c, and the § 50 illustrations. Second, the conclusion that, under the present facts, LG is an
 15 “innocent recipient of unrequested benefits” creates a moral hazard “justifying relief from the
 16 judgment” because the ultimate result of the conclusion is that all manufacturers will be immune
 17 from common law unjust enrichment claims. The implications of such a result are plainly unjust.
 18 Finally, Rule 1 of Federal Rules of Civil Procedure provides that the rules, including Rules 59(e)
 19 and 60(b), “should be construed and administered to secure the just, speedy, and inexpensive
 20 determination of every action and proceeding.” Deciding if LG is an “innocent recipient of
 21 unrequested benefits” at this stage of the litigation – rather than before the 9th Circuit – is well
 22 within the spirit of Rule 1.
 23

24 ¹ *Liberty Mutual Ins. Group v. Panelized Structures, Inc.*, 2012 WL 1185676 *1 (D. Nev. April 6, 2012) (citing
 25 *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993); *Kona Enters., Inc. v. Estate of Bishop*, 229
 F.3d 877, 890 (9th Cir. 2000).

² *Smith v. Clark County*, 2011 WL 4007532 *1 (D. Nev. Sept. 8, 2011).

1 **B. LG is not an “innocent recipient of unrequested benefits.”**

2 The issue before the Court in Plaintiff’s Motion for Reconsideration, stated simply is: “Is
3 LG an ‘innocent recipient of unrequested benefits’ as contemplated by Restatement Third,
4 Restitution and Unjust Enrichment § 50(3)?” Section 50(1) defines “innocent recipient” as “one
5 who commits no misconduct in the transaction concerned and who bears no responsibility for the
6 unjust enrichment in question,” and § 50 cmt. c explains that “unrequested benefits” are goods or
7 services conferred by mistake. LG is clearly not an “innocent recipient,” and the “benefits”
8 conferred to LG were not “unrequested.”
9

10 **C. Plaintiff’s claim for Unjust Enrichment and Restitution is Just and**
11 **Equitable.**

12 Let there be no misunderstanding, the parties would not be here today had LG not sold to
13 consumers in Nevada and across the United States very expensive televisions that failed well
14 before the end of a reasonable expected useful lifespan. LG manufactured and knowingly sold
15 shoddy goods. Common law claims for unjust enrichment and restitution were developed to
16 address the very scenario presented in this case.

17 [T]he law of restitution is crystallized by Lord Mansfield’s famous
18 statement in *Moses v. Macferlan*, 2 Burr. 1005, 1012, 97 Eng. Rep.
19 676, 681 (K.B. 1760): “In one word, the gist of this kind of action
20 is, that the defendant, upon the circumstances of the case, is
21 obliged by the ties of natural justice and equity to **refund the**
22 **money.**”³

23 LG would have the Court believe that once its Limited Warranty expired, it was absolved
24 of any and all liability under common law theories of unjust enrichment and restitution. This is
25 simply not the case. *See* this Court’s Order of October 18, 2012, (Doc. # 49). LG would also
have the Court believe that LG may not be left in a position worse off than if the transaction had

³ Restatement Third, Restitution and Unjust Enrichment § 1 cmt. b. (Emphasis added.)

1 not taken place. Contrary to LG's assertions, "[r]estitution may strip a wrongdoer of all profits
2 gained in a transaction"⁴ and "yield recovery that is profitable to the claimant."⁵

3
4 **CONCLUSION**

5 For the reasons stated above, Plaintiff respectfully requests that this Court grant
6 Plaintiff's Motion for Reconsideration of the Order, and reinstate Plaintiff's claim for Unjust
7 Enrichment and Restitution.

8 Dated March 26, 2013.

Respectfully submitted,
FEDERMAN & SHERWOOD

9
10 By: /s/ William B. Federman
11 WILLIAM B. FEDERMAN
12 10205 N. Pennsylvania Avenue
13 Oklahoma City, Oklahoma 73120
(405) 235-1560 Telephone
(405) 239-2112 Facsimile

14 DENNIS L. KENNEDY
15 Nevada Bar No. 1462
16 JOSEPH A. LIEBMAN
17 Nevada Bar No. 10125
18 BAILEY KENNEDY
19 8984 Spanish Ridge Avenue
20 Las Vegas, Nevada 89148-1302
21 (702) 562-8820 Telephone
22 (702) 562-8821 Facsimile

23
24 Attorneys for Plaintiff

25

⁴ *Id.* § 1 cmt. d.

⁵ *Id.* § 3 cmt. c.

CERTIFICATE OF SERVICE

I HERBY CERTIFY that on March 26, 2013, I caused a true and correct copy of the foregoing **PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION** to be served via the U.S. District Court's Notice of Electronic Filing ("NEF") in the above-captioned case, upon the following:

Pat Lundvall (NSBN 3761)
Kristen T. Gallagher (NSBN 9561)
McDONALD CARANO WILSON LLP
2300 W. Sahara Avenue, Suite 1000
Las Vegas, NV 89102
lundvall@mcdonaldcarano.com
kgallagher@mcdonaldcarano.com

Sandra C. McCallion
S.C. Sohn
Thomas E. Bezanson
Christopher M. P. Jackson
Matthew V. Povolny
COHEN & GRESSER LLP
800 Third Avenue, 21st Floor
New York, NY 10022
smccallion@cohengresser.com
scsohn@cohengresser.com
tbezanson@cohengresser.com
cjackson@cohengresser.com
mpovolny@cohengresser.com
Attorneys for Defendant LG Electronics, U.S.A., Inc.

/s/ William B. Federman
WILLIAM B. FEDERMAN